

(2002) 04 DEL CK 0065
In the Delhi High Court
Case No : SAO No. 259 of 1987

Sh. Chander Prakash and Another

APPELLANT

Vs

J.B. and Company

RESPONDENT

Date of Decision : 17-04-2002

Acts Referred:

Citation : (2002) 8 AD 34 : (2002) 97 DLT 814 : (2002) 63 DRJ 652

Hon'ble Judges : Ramesh Chand Jain, J

Bench : Single Bench

Advocate : P.N. Bhardwaj, for the Appellant; Sanjeev Sachdeva, for the Respondent

Final Decision : Allowed

Judgement

R.C. Jain, J.—This is an application u/s 151 of the CPC moved on behalf of the appellant seeking restoration of the appeal which was dismissed for non-prosecution vide order dated 17-2-2000. The application has been made with the averments that the above referred appeal came up for preliminary hearing on 16-9-1987 and it was admitted by this Court. After that the appellant/applicant neither got any intimation from this Court or from his advocate and the date 17-2-2000 fixed for hearing of the appeal was not in the knowledge of the appellant/applicant. The appellant/applicant learnt about the same when he got inspected the trial court record through his counsel Shri Sharvan Dev, Advocate sometimes in September 2001 and then he learnt about the dismissal of the appeal. Soon thereafter he contacted his counsel and made the present application. The application is supported by an affidavit of the appellant/applicant Shri Chander Prakash. Besides an affidavit of Shri Sharvan Dev, advocate has also been filed in rejoinder.

2. The application is opposed on behalf of the respondent raising preliminary objection about the application being barred by limitation having been moved after more than 20 months of the dismissal of the appeal. Various averments made in the application as also the reasons put forth for non-appearance of the

appellant and his counsel at the time of hearing of the appeal have been controverted. It is denied that the appellant or his counsel had no knowledge of the date fixed for hearing of the appeal as the same was duly notified in the cause list issued by the Registry of this Court. It is denied that there exists sufficient reason which explains the absence of the appellant or his counsel or there is any justification for restoration of the appeal.

3. I have heard Shri P.N. Bhardwaj learned counsel appearing for the appellant/applicant and Shri Sanjeev Sachdeva learned counsel for the respondent and have given my thoughtful consideration to their respective submissions. Learned counsel for the appellant has invited attention of this court to the provisions as contained under Order XLI Rules 11, 12 and 13 of the CPC and on the strength of the same he contended that at the time of admission of the appeal no next date was intimated for hearing of the appeal and since the matter remained pending and unlisted for a period of 13 years, the appellant was entitled to a notice of the date fixed for hearing of the appeal. He also pointed out that it is a practice of the Registry of this Court to issue notice in such cases. As regards the delay in filing the application, learned counsel for the appellant submitted that he acquired the knowledge about the dismissal of the appeal only in September 2001 and soon thereafter application was moved and in any case he has made a prayer in the application for condoning the delay in filing the application. As against this the contention of the learned counsel for the respondent is that the High Court Rules do not envisage for issuance of individual notice to the parties or their counsel and listing of the case in the cause list is a sufficient compliance of the Rules and the lawyers and the parties are expected to look into the same. According to him the delay of about 20 months remains unexplained and the averments put forth by the appellant/applicant cannot be relied and acted upon. In any case his contention is that the delay in filing the application from the date of inspection of the record and the date on which the application was filed has not been explained. In support of his contention he has placed reliance on a Single Bench decision of this Court in *Virender Kumar v. Maya Devi*, 2002 (60) DRJ 434 wherein the Court taking a very strict view of the relevant provisions had declined to restore a revision petition which was dismissed for non-prosecution.

4. Having considered the respective contentions put forth on behalf of the parties and the peculiar facts and circumstances of this case that the appeal after it was admitted as back as in the year 1987, had suddenly appeared in the cause list for hearing on 17-2-2000, there was every possibility of the cause list having escaped the notice of the appellant or his counsel. What transpired between the period of filing of the application and knowledge of dismissal of the appeal, has been satisfactorily explained and this Court has no reason to disbelieve the said averments particularly on the face of the affidavit Shri Sharan Dev, advocate filed on record. Accordingly this Court is of the opinion that the absence of the appellant/applicant and his counsel at the time of hearing of the appeal was not deliberate and it has been satisfactorily explained and it is a fit case where the

application should be allowed, the dismissal of the appeal should be set aside and the appeal be restored to its original number to be heard and disposed of on merits.

5. Learned counsel for the respondent has pointed out that he had also filed cross-appeal [SAO No. 270/87 - J.B. & Company v. Chander Prakash] which the respondent had not pressed in view of the dismissal of this appeal on 17-2-2000 and in case the present application is allowed and the appeal of the appellant/applicant is restored, the appeal filed by the respondent should also be restored.

In the result the application is allowed and the appeal is restored to its original number however, subject to payment of Rs. 2500/- as costs with the further direction that the appeal SAO No. 270/87 - J.B. & Company v. Chander Prakash filed by the respondent shall also be deemed to have been restored and shall be set for hearing along with this appeal.

The appeals SAO No. 259/87 and SAO No. 270/87 shall be listed for hearing in due course.